

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #1	CCRB Case #: 201501920	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/14/2015 8:30 PM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 49	18 Mo. SOL 9/14/2016	EO SOL 9/14/2016	
Date/Time CV Reported Mon, 03/16/2015 6:20 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 03/16/2015 6:19 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Daly	14117	952635	TB DT12
2. POM Kevin Dominicci	24639	952693	TB DT12

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Luis Delgado	00683	921275	TB DT12
2. POM James Valentino	30323	946355	TB DT12
3. POM Anthony Lofaro	15548	953005	TB DT12

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Daly	Abuse: PO Michael Daly threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]
B.POM Michael Daly	Discourtesy: PO Michael Daly spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Michael Daly	Force: PO Michael Daly hit § 87(2)(b) [REDACTED] head against a window.	[REDACTED]
D.POM Kevin Dominicci	Force: PO Kevin Dominicci used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

## Case Summary

On March 14, 2015, shortly before 8:30 p.m., PO Michael Daly and PO Kevin Dominicci, of Transit District 12, arrested a John Doe, later identified as § 87(2)(b) for one count each of § 87(2)(b) in Pelham Bay Park in the Bronx. In addition to physically attacking § 87(2)(b) § 87(2)(b) was accused of throwing bleach on § 87(2)(b). Because of § 87(2)(b) erratic behavior after his arrest, Sgt. Luis Delgado, also of Transit District 12, instructed PO Daly and PO Dominicci to transport § 87(2)(b) directly to a hospital for a psychiatric evaluation. PO Daly and PO Dominicci subsequently transported § 87(2)(b) to § 87(2)(b). On arriving at § 87(2)(b), PO Daly and PO Dominicci escorted § 87(2)(b) who was yelling, spitting, and dragging his feet, through the main entrance of the adult emergency room and into the triage area. § 87(2)(b) observed § 87(2)(b) who was still in handcuffs, being escorted in. After entering the triage area, § 87(2)(b) allegedly spit on PO Daly, who responded by yelling at § 87(2)(b) “If you spit on me, I will fuck you up!” (**Allegations A and B**). PO Daly then grabbed § 87(2)(b) head and slammed § 87(2)(b) head into the window of a treatment room (**Allegation C**). § 87(2)(b) fell to the ground landing on his side. PO Dominicci then leaned down and punched § 87(2)(b) once in the stomach (**Allegation D**). At that point medical staff and hospital police came onto the scene, put § 87(2)(b) onto a stretcher and took him into a treatment room. § 87(2)(b) physician, § 87(2)(b) witnessed part of the incident.

Closure of this case was delayed past 90 days due to § 87(2)(b) requiring a court order for video footage and staff interviews. § 87(2)(b) identified § 87(2)(b) as a witness to the allegations during his interview on March 20, 2015. On April 2, 2015, phone contact was made with § 87(2)(b) but he was too busy to speak and scheduled a call for April 3, 2015. A call was placed to § 87(2)(b) on April 3, 2015 and a voicemail was left. § 87(2)(b) did not respond to any subsequent contact attempts prior to calling the CCRB on November 13, 2015 for his phone interview. On April 13, 2015 § 87(2)(b) attorney § 87(2)(b) of HHC, confirmed that the § 87(2)(b) was holding video footage of the adult ER waiting room and main entrance. § 87(2)(b) § 87(2)(b) advised that hospital staff viewed the footage and determined that some of it showed NYPD officers. § 87(2)(g)

Legal counsel served subpoenas for staff interviews and security footage to § 87(2)(b) on June 4, 2015. § 87(2)(b) § 87(2)(b) rejected service of the subpoena for staff interviews on June 22, 2015. Legal counsel obtained a court order for staff interviews and security footage on § 87(2)(b). Legal counsel advised that § 87(2)(b) § 87(2)(b) intended to fight the court order and a hearing was scheduled for § 87(2)(b). Legal counsel concluded litigation on this matter and obtained the required court order on § 87(2)(b). The order was served to § 87(2)(b) on October 2, 2015. § 87(2)(b) was not made available for an interview until November 13, 2015.

Two duplicate security videos of the § 87(2)(b) were obtained on November 17, 2015. This footage shows PO Daly and PO Dominicci escorting a handcuffed § 87(2)(b) into the § 87(2)(b) via the main entrance, but does not show any FADO allegations.



201501920\_20151124\_1445\_DM.mp4

---

### **Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation, because § 87(2)(b) was arrested with no DAT issued (01 Board Review).
- On August 19, 2015, a FOIL registration confirmed that § 87(2)(b) and § 87(2)(b) did not file any notices of claim for this incident (02 Board Review).
- § 87(2)(b) has no conviction history (see IAs pertaining to BADS searches for § 87(2)(b)).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b) and § 87(2)(b) first CCRB complaint (04 Board Review).
- PO Daly has been a member of the NYPD for three years and has three other CCRB cases involving five force allegations, none of which were substantiated. Of these other cases, one was unsubstantiated and two were truncated. In one of the truncated cases, from November 2013, PO Daly was accused of slamming a male's head into a wall.
- PO Dominicci has been a member of the NYPD for three years and has one prior CCRB case involving two allegations that were truncated. § 87(2)(g)

### **Potential Issues**

- § 87(2)(b) did not cooperate with the investigation by providing a verified statement or signing a HIPAA release for his medical records. Therefore, no injuries could be confirmed (see IAs pertaining to attempts to contact § 87(2)(b)).
- Security footage obtained from § 87(2)(b) did not cover the specific area where the incident took place and did not show any FADO allegations (see security footage).

## Findings and Recommendations

**Allegation A –Abuse of Authority: PO Michael Daly threatened § 87(2)(b) with the use of force.**

**Allegation B – Discourtesy: PO Michael Daly spoke discourteously to § 87(2)(b)**

**Allegation C –Force: PO Michael Daly hit § 87(2)(b) head against a window.**

**Allegation D –Force: PO Kevin Dominicci used physical force against § 87(2)(b)**

§ 87(2)(b) said that PO Daly and PO Dominicci escorted § 87(2)(b) in handcuffs, into the § 87(2)(b) triage area at approximately 8:30 p.m. § 87(2)(b) observed the officers from approximately 10 feet away with a clear field of vision. § 87(2)(b) said that when § 87(2)(b) was led in, he was twisting his torso, crying, and yelling, “Why am I under arrest? I didn’t do anything! I was the one who was attacked! Someone through bleach on me!” § 87(2)(b) was paying close attention to the officers, because he felt that the manner § 87(2)(b) was being escorted into the hospital was unusual. § 87(2)(b) explained that during his experience as an ER nurse, he was frequently involved with the treatment of EDPs. Based on this experience, § 87(2)(b) said that the normal procedure for admitting EDPs into the ER was for officers to escort the EDPs into the ER via the ambulance entrance with EMTs present. After being in the emergency room for approximately 15 to 30 seconds, PO Daly and PO Dominicci escorted § 87(2)(b) into the triage area. Suddenly, PO Daly yelled at § 87(2)(b) “If you spit on me, I will fuck you up!” PO Daly then grabbed § 87(2)(b) by the left side of § 87(2)(b) head using his left hand. PO Daly then forcefully slammed the right side of § 87(2)(b) head into the window of treatment § 87(2)(b) across from the medication room in the blue zone of the triage area. § 87(2)(b) landed on the floor in a seated position. After approximately five seconds, PO Dominicci leaned down and punched § 87(2)(b) in the stomach once with a closed fist using his right hand. Medical personnel then intervened and took charge of § 87(2)(b) bringing him into a treatment room. § 87(2)(b) never observed any injuries on § 87(2)(b). § 87(2)(b) also never observed § 87(2)(b) spit on PO Daly, but said that § 87(2)(b) was spitting while he spoke. § 87(2)(b) observed and memorized PO Daly and PO Dominicci’s shield numbers at the scene, because he was concerned with their behavior (05 Board Review).

Security footage of the § 87(2)(b) waiting room showed PO Daly and PO Dominicci escorting § 87(2)(b) into the ER through the main entrance and past the left side of the front desk. No FADO allegations were seen in the brief video (see security footage).

§ 87(2)(b) was the ER attending doctor during the incident and § 87(2)(b)’s supervisor. § 87(2)(b) said that when § 87(2)(b) was escorted into the ER triage area, he was in an agitated state of delirium and tried to kick and spit on staff. § 87(2)(b) observed § 87(2)(b) on the ground and involved in a general scuffle with PO Daly and PO Dominicci, but did not remember any specific actions. § 87(2)(b) said that he sedated § 87(2)(b) during the incident in order to calm the situation and conduct an examination of § 87(2)(b). § 87(2)(b) would not confirm whether § 87(2)(b) sustained any injuries due to HIPAA regulations. Immediately after the incident, § 87(2)(b) informed § 87(2)(b) that PO Daly slammed § 87(2)(b) head into a window and that PO Dominicci punched § 87(2)(b). § 87(2)(b) stated that he considered § 87(2)(b) to be reliable (06 Board Review).

PO Daly said that after arresting § 87(2)(b) at the scene at Pelham Bay Park, § 87(2)(b) was continually yelling and banging the right side of his head against the rear passenger window of their RMP approximately 12 times in quick succession. Due to this erratic behavior, Sgt. Delgado instructed PO Daly and PO Dominicci to transport § 87(2)(b) directly to the hospital for a psychiatric evaluation. § 87(2)(b) continued to scream, cry, and strike his head on the window of the RMP on the 20 minute ride to the hospital. PO Daly never observed any damage or blood on the window that § 87(2)(b) was striking. PO Daly said that he and PO Dominicci escorted § 87(2)(b) through the front door of the § 87(2)(b) ER and not the ambulance side. While being escorted into the emergency room, § 87(2)(b) continued to yell, scream, and went limp so that PO Daly and PO Dominicci had to hold him up by his arms and assist him in walking inside. Within two minutes of arriving at the hospital, PO Daly and PO Dominicci escorted § 87(2)(b) to the left side of the desk into the ER and past separate patient treatment rooms on their right. PO Daly thought that these rooms had windows. While passing the patient treatment rooms, § 87(2)(b) spit in PO Daly's face. PO Daly said that he did not have any significant reaction to § 87(2)(b) spitting in his face and simply said, "That's disgusting. Please don't spit on me." PO Daly denied that he or any officer ever said to § 87(2)(b) "You spit on me, I'll fuck you up!" PO Daly denied that he or any officer used any profanity or threats of force toward § 87(2)(b). PO Daly denied that he or any officer ever slammed § 87(2)(b) head into a window and denied that § 87(2)(b) head ever made contact with a window or any object in the hospital. After spitting in PO Daly's face, § 87(2)(b) was made to sit on the ground, but PO Daly did not remember how this was done. PO Daly said that while sitting on the ground, § 87(2)(b) kicked a Hispanic, female nurse. PO Daly never obtained this nurse's name. PO Daly and PO Dominicci responded by moving § 87(2)(b) away from the nurse, who did not wish to press charges. PO Daly denied that PO Dominicci ever bent down and punched § 87(2)(b) in the stomach. PO Daly never observed any injuries or blood on § 87(2)(b). § 87(2)(b) never complained of any injuries. § 87(2)(b) never complained that any officer slammed his head into a window or punched him in the stomach. § 87(2)(b) was then put onto a stretcher with the assistance of hospital staff and brought into a treatment room (07 Board Review).

PO Dominicci generally confirmed PO Daly's statement that § 87(2)(b) was behaving erratically by yelling and banging his head against the window of their RMP at Pelham Bay Park and while he was being transported to § 87(2)(b). PO Dominicci confirmed that he and PO Daly escorted § 87(2)(b) into the § 87(2)(b) through the main entrance and that § 87(2)(b) was yelling, screaming, and dragging his feet. PO Dominicci said that § 87(2)(b) spit in the direction of PO Daly, but did not hit him. PO Dominicci said that PO Daly responded by yelling a statement along the lines of, "Stop acting up!" PO Dominicci never heard PO Daly or any officer yell, "You spit on me, I'll fuck you up!" PO Dominicci did not recall whether PO Daly made any similar statements, or used the word "fuck," but said that neither PO Daly nor any officer threatened to use force against § 87(2)(b). PO Dominicci also denied that PO Daly or any officer ever slammed § 87(2)(b) head into a window. PO Dominicci said that because of § 87(2)(b) behavior, he forced § 87(2)(b) to sit on the ground by pulling him down by his arms while moving his legs forward. While on the ground, § 87(2)(b) kicked an older female, Filipino nurse, who did not wish to press charges. PO Dominicci denied that he or any officer ever punched § 87(2)(b) in the stomach. PO Dominicci's response to § 87(2)(b) kicking the nurse was to pull § 87(2)(b) away from the nurse. An unknown number of hospital police then came onto the scene and helped PO Dominicci

and PO Daly strap § 87(2)(b) to a stretcher using hospital restraints. PO Dominicci assumed that § 87(2)(b) had a head injury from striking his head on the window of the RMP, but never observed any injuries on § 87(2)(b). § 87(2)(b) never complained of any injuries. § 87(2)(b) never complained that any officers slammed his head into a window or punched him in the stomach (08 Board Review).

Sgt. Delgado said that when he arrived at Pelham Bay Park, § 87(2)(b) was screaming and moving around a lot while sitting in the RMP. Sgt. Delgado did not see § 87(2)(b) striking his head against anything while seated in the RMP. Although § 87(2)(b) was under arrest for assault, Sgt. Delgado decided that PO Daly and PO Dominicci should transport him directly to § 87(2)(b) for a psychiatric evaluation due to his erratic behavior. PO Daly and PO Dominicci then left with § 87(2)(b) in their RMP while Sgt. Delgado went with his operator, PO Scott Liebensohn to § 87(2)(b). Sgt. Delgado did not remember which officers arrived at the hospital first, but said that the next time he saw § 87(2)(b) § 87(2)(b) was lying in a treatment bed and handcuffed to the bed. Sgt. Delgado never heard § 87(2)(b) complain of having his head slammed into a window, being punched in the stomach, or being injured by officers. Sgt. Delgado never heard § 87(2)(b) complain of any threats of force used against him. No civilians or officers ever informed Sgt. Delgado that physical force had been used against § 87(2)(b) (09 Board Review).

P.G. 203-09 says that officers must be courteous and respectful (13 Board Review).

In Police Department v. Briscoe it was found that an officer' statement, that he wished he had five minutes alone with the individual, served no purpose other than intimidation (Oath Index No. 1328/00, September, 29, 2000) (11 Board Review).

P.G. 203-11 says that officers must use minimum necessary force (10 Board Review).

In Police Department v. PO Eleodoro Mata, an officer was found guilty of excessive force when he punched a handcuffed prisoner in the face after the prisoner kicked a door closed causing the door to strike the officer (Oath Index No. 79687/04, January 25, 2005).

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

---

Squad: 1

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date